

IN THE SUPREME COURT OF INDIA

Extra Ordinary Jurisdiction

Writ Petition (C) No. 494 of 2012

In the Matter of:

Justice K.S. Puttaswamy (Retd.) & Anr.

... Petitioners

Vs.

Union of India & Ors.

... Respondents

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ADVOCATE FOR STATE OF BIHAR - ABHINAV MUKERJI

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EXTRA ORDINARY ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 494 of 2012

In the Matter of:

Justice K.S. Puttaswamy (Retd.) & Anr.Petitioners

Versus

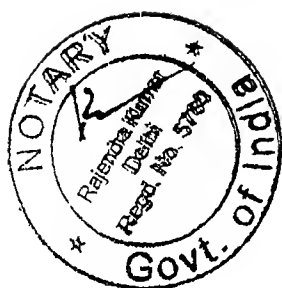
Union of India & Ors ...Respondents

REPLY AFFIDAVIT ON BEHALF OF THE RESPONDENT -

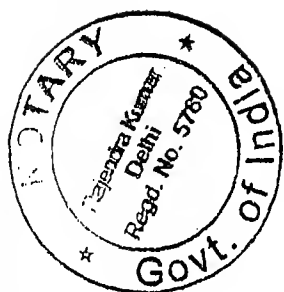
STATE OF BIHAR

I, R.K. Singh S/o late Bhanu Pratap, aged about 59 years, posted as Deputy Director, Agricultural Census, Revenue & Land Reforms Department, Government of Bihar, Patna and presently at New Delhi do hereby solemnly affirm and state as follows:-

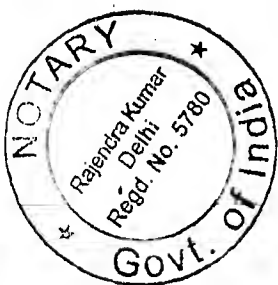
1. That I am the Deputy Director, Agricultural Census, Revenue & Land Reforms Department, Government of Bihar, Patna. I am acquainted with the facts and circumstances of the case and competent to affirm this affidavit on behalf of the Respondent Government.
2. The Respondent Government has gone through the contents of the present Writ Petition and denies all the averments which are contrary to and or inconsistent with the facts and submissions set out herein under and to the extent that the same are not specifically admitted in this affidavit.



3. The present Writ Petition does not raise any questions of law of pertaining to Part III of the Constitution of India, requiring any interpretation of this Hon'ble Court under Article 32 of the Constitution of India, in as much as the Petitioners have failed to substantiate as to how the issuance of the 12-digit Aadhar Number to the Residents of India/Residents of Bihar on a voluntary basis amounts to an invasion of the Right to Privacy guaranteed under Article 21 of the Constitution of India and therefore, the present Writ Petition is liable to be dismissed.
4. It is respectfully submitted that the present Writ Petition deserves to be dismissed in view of the law laid down by this Hon'ble Court and the High Courts in a catena of judgments wherein the scope and ambit of Article 73 of the Constitution of India has been dealt with elaborately. It is submitted that this Hon'ble Court, in *J.R. Raghupathy v. State of A.P.* (1988) 4 SCC 364, has held that on a perusal of Articles 73 and 162 of the Constitution of India, that the executive powers of the Union and the States under Articles 73 and 162 of the Constitution of India are much wider than the prerogative powers in England. That in the interest of the administration of the nation, the executive has an important role to play in the governance of the country co-terminus with the other branches of government.



5. Therefore, it is respectfully submitted that while interpreting Article 73, this Hon'ble Court as well as the various High Courts have held time and again that where the Constitution does not require that an action to be taken only by the legislation or there is no existing law to fetter the executive power of the Union (or the State), the Government would not only be free to take such action by an Executive Order or to lay down a policy for the making of such executive orders, but also to change such orders or the policy itself as often as the Government so requires, subject to the condition that the change must be made in exercise of a reasonable discretion and not arbitrarily. That the making or changing of such order is communicated to those concerned and it complies with Article 14, so that equal persons are not treated unequally.
6. It is respectfully submitted that the process of issuing Aadhar to the people has been followed fervently in the State of Bihar. It is pertinent to mention that more than 4.35% of the population of the State of Bihar (in accordance with Census 2011), has already been covered till date and the remaining population is likely to be covered by 31.12.2014.
7. That the process of issuance of Aadhar Number is a voluntary project with the main objective to benefit the society who have no formal proof of identity and therefore, face a lot of difficulties of assessment in many welfare schemes that are

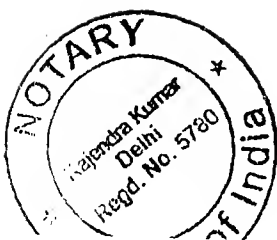


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implemented by the Respondent No.1 and the Respondent Government.

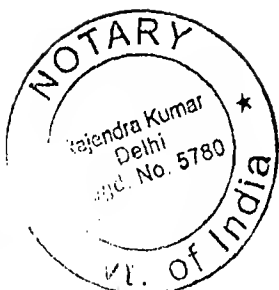
8. It is respectfully submitted that there are a huge number of people belonging to vulnerable sections of society who are not getting any benefit of the various welfare schemes of Bihar for want of proper identification. That the Government had taken extra efforts to identify and provide them an Aadhar so as to enable them to gain benefits of these welfare schemes. That further, special camps were organized for the homeless, construction labourers, physically challenged and aged persons.

9. It is submitted that to the extent that the process of enrolments is concerned, every machine and its software deployed in the State of Bihar, is registered with UIDAI and it is verified at various stages of enrolment. That every operator is certified and registered with UIDAI, and further authenticated with his biometrics at various stages of his activity. It is submitted that although the machines are operated by private vendors, their work has been supervised by the registrars and the UIDAI, at every stage. That the information collected from the residents have been immediately encrypted with the help of state-of-the-art encryption technique (Digital Signature), and the enrolment agencies or any other unauthorized person cannot



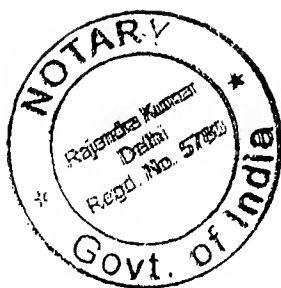
open/read/edit the encrypted information which is being decrypted only at the UIDAI data centre. That further, the files containing the encrypted information of the residents are being sent to the UIDAI through secured File Transfer Protocol (SFTP) and that there is the least chance of compromising the integrity of the resident's information.

10. It is respectfully submitted that stringent action has been taken against errant operators and agencies in case of lapse in the process or any deviations found which includes filing of FIRs, black-listing of operators and suspension of enrolment agencies and withholding of payment in cases where there was any lacunae on part of the agency.
11. That with regard to any oversight in the entire enrolment operations, regular review meetings from the senior levels of the Government to the level of field officers, have been taking place and course-corrections are being done as and when required. Additionally, inspection of enrolment by monitors appointed for this purpose as well as by government staff have been part of the oversight process.
12. It is respectfully submitted that it is incumbent on the Government to discharge its duties and responsibilities in an orderly, effective and transparent manner. That it is a well-established prerogative of the Government to organize its



work, following sound management practices, periodically re-engineer its processes and make use of technology to induce efficiency, convenience, transparency and accountability in the delivery of public services. It is submitted that the Aadhar scheme and its application to public services, is a well-considered decision of the Government, to ensure that the benefits go to intended individuals, and that leakages and wastes in the deployment of public funds are reduced to the minimum so as to enable the residents to avail services with ease and convenience.

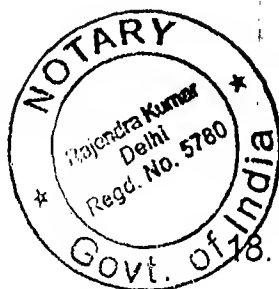
13. It is submitted that the application of Aadhar to the social security benefit schemes is clearly in the larger public interest. That the objective is to clean up the delivery system and to ensure that nobody takes away the legitimate rights of the beneficiaries as the purpose of issuance of Aadhar is solely for the protection of the rights of the beneficiaries.
14. That the impact of social security benefit schemes would be substantially diluted if Aadhar is not used as an identity proof. That the same would lead to the continuance of fake and duplicate beneficiaries, apart from causing a hindrance in delivering services, which is rigged with inefficiency, non-transparency and delays, resulting in denial of rights of legitimate beneficiaries.



15. It is pertinent to note that since the Aadhar number corresponds to a unique record in the Aadhar data-base tagged to a unique individual, therefore, mere introduction of Aadhar in the data-base, ensures detection of a large number of duplicates.

16. That, it is reiterated that there will be no denial of benefits for absence of Aadhar with a person. It is submitted that the State Government will ensure the enrolment of beneficiaries who do not have an Aadhar. That the State will also give adequate time to the beneficiaries for this purpose. It is respectfully submitted that the use of Aadhar is an enabling and empowering tool for the Government for better service delivery, and for which the Respondent Government will put to use for its various service-delivery initiatives.

17. It is respectfully submitted that the introduction of Aadhar based welfare schemes have resulted in the inclusion and benefit of marginalized sections of the society by not only providing them with an identity proof, but also facilitating them in getting Bank accounts, as well.



It is respectfully submitted that the Respondent Government craves leave of this Hon'ble Court to file a detailed affidavit, if required, at a later stage. The Respondent Government further craves leave to bring on record the various other

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advantages of Aadhar (UID) which will help in reaching the benefits of various Central and State Government Schemes to the actual beneficiaries, thereby, avoiding pilferage of funds on the basis of the measures/schemes already under implementation and on the understanding of the same, so far.

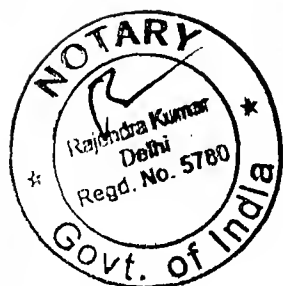
19. It is submitted that in view of the facts aforementioned, the Writ Petition deserves to be dismissed in limine as the same is devoid of any merits.

Rajendra Kumar

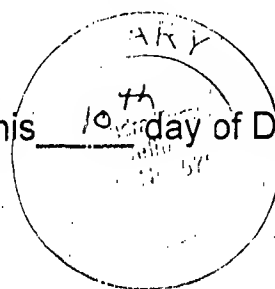
DEPONENT

VERIFICATION:

I, the above named deponent, do hereby verify that the facts stated in the above affidavit are true and correct to my knowledge based on official records maintained in the ordinary course of work, which I believe to be true. Legal submissions are based on advice of counsel and are believed to be true. No part of it is false and nothing material is concealed there from.



Verified at New Delhi on this 10th day of December, 2013.



Rajendra Kumar

DEPONENT

CERTIFIED THAT THE CONTENTS EXPLAINED TO THE
DEPONENT EXECUTANT WHO IS SEEMED PERFECT TO
UNDERSTAND & AFFIRMED DEPOSED BEFORE ME AT
DELHI ON 10.12.2013 IDENTIFIED BY
SIGNATURE OF THE EXECUTANT/DEPONENT WHO HAS
SIGNED IN MY PRESENCE

ATTESTED
Rajendra Kumar
RAJENDRA KUMAR
NOTARY, DELHI-8766
GOVT. OF INDIA
COMPOUND, NEW DELHI
Register Pg./Sl. No. 10.12.2013

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